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ATTORNEYS FOR USA SCREEN PRINTING & EMBROIDERY, INC., PLAINTIFF

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:

JOHN JACOBS,

Debtor.

CASE NO. 02-37402-BJH-7

**USA SCREEN PRINTING &
EMBROIDERY, INC.,**

Plaintiff,

vs.

JOHN JACOBS,

Defendant.

ADVERSARY NO. 02-3574

**PLAINTIFF USA SCREEN PRINTING & EMBROIDERY, INC.'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

COMES NOW the Plaintiff, USA Screen Printing & Embroidery, Inc., ("Plaintiff"), and
files its Proposed Findings of Fact and Conclusions of Law as follows:

PLAINTIFF USA SCREEN PRINTING & EMBROIDERY, INC.'S PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW-PAGE 1 OF 13

U.S. BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

Findings of Fact

1. Plaintiff was a supplier of certain merchandise used and sold by John Jacobs and the Power Team, Inc. (the "Power Team") in its evangelistic crusades.
2. John Jacobs is the sole principal of the Power Team.
3. On or about July 11, 2000, the Power Team entered into a contract with Plaintiff, to extend credit to the Power Team for the purchase of caps, t-shirts and bandanas to be sold by the Power Team at its crusades (the "Credit Agreement").
4. The Credit Agreement, among other things, as far as "Payment" terms here material, provides: "Buyer will pay interest from the invoice maturity date, to the payment date, at the maximum rate allowed by law."
5. During the period from April, 2000 to August, 2001, relying on the Credit Agreement Plaintiff sold on account and delivered to the Power Team \$82,979.50 worth of merchandise, and the Power Team accepted the merchandise as tendered.
6. The Power Team, at the time of the execution of the Credit Agreement, never intended to pay Plaintiff for any goods ordered.
7. The Power Team was sent Invoices by Plaintiff for the sum of \$82,979.50, reflecting the agreed price for the merchandise.
8. Although repeated demands for payment were made, the Power Team did not pay for the merchandise purchased.
9. On or about July 11, 2000, Defendant for value received, and for the purpose of enabling the Power Team to obtain credit and other financial accommodations from Plaintiff, guaranteed to the Plaintiff, as a primary obligor, any and all indebtedness owed or thereafter owed by the Power Team to Plaintiff. Plaintiff relied on these representations to its detriment.
10. Although repeated demands for payment were made, Defendant did not pay for the merchandise purchased.

11. On September 11, 2001, Plaintiff filed a Complaint in the United States District Court, Western District of Oklahoma, styled "USA Screen Printing and Embroidery Company, Inc., Plaintiff v. John Jacobs and the Power Team, Inc., John Jacobs Evangelistic Association, and John Jacobs, Defendants," bearing Case No. CIV-01-1428R (the "Lawsuit").

12. Subsequently, Plaintiff and all three Defendants entered into a settlement agreement dated February 5, 2002.

13. The settlement agreement is a binding contract which obligates the three Defendants to pay Plaintiff the sum of \$82,979.50, payable as follows:

- a. \$1,000.00 on or before February 8, 2002;
- b. \$10,000.00 on or before March 1, 2002;
- c. \$5,000.00 on or before April 1, 2002;
- d. \$5,000.00 on or before May 1, 2002;
- e. \$5,000.00 on or before June 1, 2002;
- f. \$5,000.00 on or before July 1, 2002;
- g. \$5,000.00 on or before August 1, 2002;
- h. \$5,000.00 on or before September 1, 2002;
- i. \$5,000.00 on or before October 1, 2002;
- j. \$5,000.00 on or before November 1, 2002;
- k. \$5,000.00 on or before December 1, 2002;
- l. \$5,000.00 on or before January 1, 2003;
- m. \$5,000.00 on or before February 1, 2003;
- n. \$5,000.00 on or before March 1, 2003;
- o. \$5,000.00 on or before April 1, 2003;
- p. \$5,000.00 on or before May 1, 2003; and,
- q. \$1,979.50 on or before June 1, 2003.

14. Pursuant to the terms of the settlement agreement, Plaintiff and the three Defendants entered into an agreed Journal Entry of Judgment which was not to be filed in the case to the extent three Defendants liquidated amounts due under the Journal Entry was paid consistent with the agreement of the parties. In the event the three Defendants failed to timely make any regular payment imposed by the settlement agreement ("Default"), Plaintiff reserved the right to reopen the lawsuit to commence all collection efforts available to it by law in order to fully collect all amounts

that may be owed pursuant to the settlement, less any sums that Plaintiff received pursuant to payments made by the three Defendants pursuant to the settlement.

15. The settlement agreement provides at paragraph 3.6 that:

It is specifically understood, agreed and bargained for by the parties hereto that the indebtedness represented by the Judgment referenced in this Agreement is not dischargeable through bankruptcy, or any similar proceeding pursuant to 11 U.S.C. §523(a)(2)(A) or (B), or otherwise, for the reason that the Judgment is premised upon actions and/or omissions of Jacobs which would render it not subject to discharge.

16. At the time of executing the settlement agreement, Jacobs never intended to be bound by, or to perform the obligation contained in, paragraph 3.6 of the settlement agreement.

17. On August 27, 2002, the Court entered its Consent Journal Entry of Judgment in the Lawsuit. The Court found that:

[S]olely for purposes of any bankruptcy related proceeding of the Defendants, John Jacobs and Power Team, Inc., John Jacobs Evangelistic Association, and John Jacobs, this Judgment is not dischargeable through bankruptcy, or any similar proceeding, pursuant to 11 U.S.C. §523(a)(2)(A) or (B), or otherwise, for the reason that the Judgment is premised upon actions of Defendants which would render them not subject to discharge.

18. The final judgment was for the sum of \$82,979.50, plus interest thereon through July 31, 2001 in the amount of \$8,799.26, plus interest payable thereon from and after August 1, 2001, at the rate of 18% per annum until paid, court costs and litigation expenses of \$300.00, and attorney's fees of \$10,000.00, which fees and costs have been stipulated to by and between the parties hereto.

19. On August 20, 2002, John Jacobs and the Power Team, Inc., a Texas non-profit corporation, filed a petition under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 02-37177-SAF-11 (the "Power Team Bankruptcy").

29. Mr. Jacobs testified at the Power Team's § 341 Meeting that as a result of being held hostage, the Power Team had to survive on the company credit card, and that resulted in "probably 80% or more" of the Power Team's \$280,000 credit card debt.

30. The Power Team is named as defendant in the following Dallas County lawsuits, all filed before the Power Team's trip to South Africa in 2000:

- a. Cause No. 9301029D, filed February 8, 1983; *WTLT v. John Jacobs and the Power Team and The John Jacobs Evangelistic Association*, a suit on a sworn account;
- b. Case No. 8912570B, filed October 19, 1989; *Hyatt Regency New Orleans, et al. v. John Jacobs Evangelistic Association, Power Team, et al.*; motor vehicle damages and sworn account;
- c. Cause No. 9403986C, filed April 25, 1994; styled *Advertising Consultants, Inc. et al. v. John Jacobs Evangelistic Association d/b/a the Power Team, et al.*, a suit to domesticate a foreign judgment on a debt;

31. The John Jacobs Evangelistic Association, which Jacobs claims is the same entity as the Power Team, is also listed as a defendant in at least seven other debt-related lawsuits filed or domesticated in Dallas County between 1990 and 1993 alone.

32. The Power Team reduced its staff by a third to a half during the year just prior to bankruptcy.

33. The Power Team, however, did not reduce Mr. Jacobs's income during that same time.

34. At the creditor's meeting in the Power Team Bankruptcy, Mr. Jacobs testified that his salary was "in the \$290[,000] to \$310[,000] range."

35. Until the Court appointed a trustee for the Power Team, the Power Team paid Mr. Jacobs approximately \$400,000 a year.

36. During the year before The Power Team filed bankruptcy, it made regular salary payments to John Jacobs, made car payments and paid other expenses related to the Hummer that Mr. Jacobs used as his personal car.

37. The Power Team's bankruptcy schedules indicate that the other musclemen on the Power Team—who are paid per event as contract laborers—did not get paid by the Power Team.

38. The Power Team's bankruptcy schedules reflect numerous payments to John Jacobs that Mr. Jacobs was unable to explain.

39. The Power Team pays spousal support to Mr. Jacobs's ex-wife Ruth Anne Jacobs, and also to his second wife, Sara Bonham.

40. None of these payments reduced the size of Mr. Jacobs's paycheck, but instead only increased the Power Team's monthly obligations.

41. In addition to the spousal support payments that the Power Team makes on his behalf, the Power Team also makes additional monthly payments to Jacobs's first wife, Ruth Anne.

42. The Power Team has made those payments each of the twelve months just prior to the Power Team's bankruptcy filing.

43. The Power Team made those payments to Jacobs's former wife even though the Power Team was not able to make current payments due to employees still working for the Power Team.

44. Even after for filing bankruptcy, the Power Team continued to pay his lavish salary, and to make other questionable payments while failing to pay post-petition creditors.

45. On October 1, 2002, Jacobs appeared at the §341 Meeting of Creditors in his individual bankruptcy and testified under oath.

46. When asked at his §341 meeting about discrepancies between the schedules he filed in his bankruptcy and the ones he filed in the Power Team Bankruptcy, he was unable to give an explanation.

47. Specifically, the Power Team's statement of financial affairs lists payments to John Jacobs and unspecified cash advances during June, July, and August of 2002 totaling \$104,790.08.

48. The Statement of Financial Affairs that Mr. Jacobs filed in his personal bankruptcy lists payments totaling \$33,313.56 for that same time.

49. If Mr. Jacobs had no money at all at the beginning of June, he should still have \$71,476.52 after having made all the payments he listed in his statement of financial affairs.

50. Mr. Jacobs's schedules present other difficulties regarding credibility. For example, Mr. Jacobs, who is about 6'4" tall, between 325 and 350 pounds, carrying no fat whatsoever, and who makes his living as a weightlifter and strongman, claims to own no exercise equipment other than an exercise bicycle and a sit-up machine, which together he values at \$450. Yet he lists not payments to any health club or workout facility during the three months before his bankruptcy. Likewise, the Power Team neither owns any exercise equipment nor lists payments to any workout club on its statement of financial affairs.

51. Defendant's bankruptcy schedules are replete with material misstatements and omissions:

- a. His Bankruptcy Schedule B stated that he owns no wearing apparel, yet he showed up at his 341 meetings wearing clothes that appeared to be made to measure and expensive, and he states on Schedule J that he spends \$200 monthly on clothing and \$400 monthly on laundry and dry cleaning.
- b. His Bankruptcy Schedule B states that he owns no jewelry, yet his Schedule F indicates that he owes \$8,000 to a jeweler.
- c. Jacobs states on his Schedule J that each month he has \$1,000 of medical and dental expenses not covered by insurance, yet on his statement of financial affairs he fails to list any such payments.
- d. Jacobs states on his Schedule J that he makes monthly payments of \$1,686 for his Hummer and pays an additional \$200 each month for other transportation

expenses. At the Power Team's 341 meeting, however, he testified that the Power Team provided his transportation and paid for his Hummer. The Power Team's statement of financial affairs indicates that at least in May of 2002, the Power Team made a payment on the Hummer and also paid the vehicle registration fees for the Hummer. Jacobs is not able to state clearly whether he or the Power Team in fact pays for his automobile.

- e. At the meeting of creditors in the Power Team's bankruptcy, Jacobs stated that the Power Team was current on all of its payments to creditors until the trip to South Africa. But public records of lawsuits against the Power Team for collection of debts establish that his claim is untrue.
- f. At the Power Team's 341 meeting, Mr. Jacobs appeared to testify that he had not been to South Africa except on that single trip that he took with the Power Team.

52. John Jacobs has failed to keep books or any recorded information from which his financial condition or business transactions might be ascertained. Specifically, he has filed sworn statements of financial affairs in both his personal bankruptcy and the Power Team's bankruptcy that conflict with his testimony. The statements that he filed indicate that he should have at least \$50,000 on hand, yet he claims to have no money at all. Upon questioning, Jacobs failed to explain where his money went. And even though instructed to correct his schedules and statements of financial affairs at both creditors' meetings, he has not done so in either bankruptcy.

53. The Power Team failed to produce books and records requested by creditors at the Power Team's creditors' meeting and again in writing after the creditors' meeting.

54. Jacobs has made false oaths in both his personal and corporate bankruptcies as set forth above.

Conclusions of Law

1. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334, and 11 U.S.C. § 523(a)(2), § 727(a)(2), (4), (5), and (7).
2. This is a core proceeding under 28 U.S.C. § 157.
3. Defendant's participation in the Credit Agreement, Settlement Agreement and collateral scheme, involving Plaintiff constituted obtaining money, property, extension, renewal, or refinancing of credit by reason of false pretenses, false representation, and actual fraud or by a statement in writing that was materially false upon which Plaintiff relied.
4. Defendant knew of and participated in a scheme, artifice and device for converting the merchandise and funds.
5. By scheme, artifice and device, Defendant intentionally and maliciously converted the merchandise and funds for Defendant's own use, dominion and control.
6. Defendant misrepresented material facts to, and concealed material facts from Plaintiff in order to further the scheme, artifice and device for converting the merchandise and funds.
7. Defendant willfully, intentionally and maliciously injured Plaintiff.
8. The debt owed by Defendant to Plaintiff be excepted from discharge under 11 U.S.C. § 523(a)(2) and § 523(a)(6), or such other provision of the Bankruptcy Code, or other applicable law, as the facts of this case prove applicable.
9. John Jacobs, with intent to hinder, delay, and defraud his creditors, permitted the Power Team to make transfers within in a one year prior to the date it filed bankruptcy or after the date of the filing of the petition.
10. Because The Power Team is in bankruptcy, Jacobs's acts as set forth above constitute a violation of section 727(a)(7) of the Bankruptcy Code.

11. John Jacobs, with intent to hinder, delay, and defraud his creditors, permitted the Power Team to make transfers within in a one year prior to the date he filed bankruptcy or after the date of the filing of the petition.

12. Because John Jacobs, Individually is in bankruptcy, Jacobs's acts as set forth above constitutes a violation of section 727(a)(2) of the Bankruptcy Code, and his discharge should be denied.

13. Jacobs's failure to maintain records so that his financial condition can be ascertained constitutes a violation of Section 727(a)(3) and (5) of the Bankruptcy Code.

14. Jacobs has also failed to keep books and records regarding the Power Team in violation of Section 727(a)(3) and (5) of the Bankruptcy Code.

15. Jacobs's failure to maintain records of the Power Team so that its financial condition can be ascertained constitutes a violation of Section 727(a)(3) and (5) of the Bankruptcy Code.

16. The violation of section 727(a)(3) and (5) in the Power Team's bankruptcy constitutes a violation of section 727(a)(7) of the Bankruptcy Code.

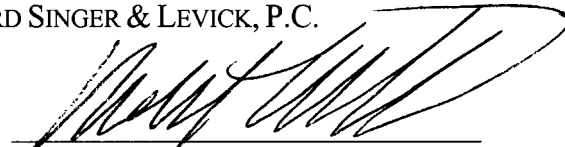
17. Each of the false statements listed above, as well as others, constitutes a violation of section 727(a)(4) or (a)(7) of the Bankruptcy Code.

18. The Plaintiff's judgment against Jacobs is not dischargeable in bankruptcy.

Respectfully submitted,

GERARD SINGER & LEVICK, P.C.

By:



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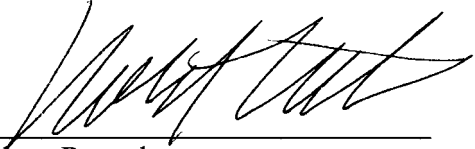
CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certified that on March 28, 2003, the above and foregoing document was served by U.S. Mail and/or facsimile, in compliance with the Federal and Local Rules of Bankruptcy Procedure, on the following:

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